

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO. 456 OF 2008
IN
SUIT NO. 3476 OF 1996

M/s. Selvel Publicity & Consultants P Ltd .. Appellant

Versus

Bombay Cricket Association .. Respondent

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- Ms. Dipti Bhuta a/w Ms. Nita Solanki i/by Kiran Jain & Co for the Appellant
 - Mr. Warkerkar i/by Warkerkar & Warkerkar for the Respondent
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CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : OCTOBER 3, 2019.

P.C.:

1. This appeal is filed by the original defendant challenging a judgment and decree dated 25.6.2007 passed by the learned single Judge in Suit No. 3476 of 1996. The said suit was filed by the present respondent Mumbai Cricket Association seeking recovery of sum of Rs. 24,39,655/- from the defendant with interest. The suit was based on breach of contractual terms by the defendant. The plaintiff then referred to as 'Bombay Cricket Association' had hosted certain matches to which the defendant had certain

advertisement rights. Dispute surfaced between the parties leading to the Bombay Cricket Association (now referred as 'Mumbai Cricket Association') filing a suit for recovery of damages.

2. It is undisputed that the summons in the suit was duly served on the defendant despite which neither written statement was filed, nor any representation was made on behalf of the defendant. Learned single Judge allowed the plaintiff to lead evidence in support of the claim and disposed off the suit by the impugned judgment and decree dated 25.6.2007 by drawing a decree of sum of Rs. 18,53,000/- in favour of the plaintiff. The said sum would be recovered with 9% interest per annum from 18.11.1994 till actual payment. This judgment, the appellant - original defendant has challenged in the present appeal. Main ground is that upon service of summons, the appellant had engaged an advocate, instructed him to file written statement and also lodge counter claim. However, apparently, neither the written statement was filed nor appearance made in the said suit, instead, an independent

Suit No. 8313 of 1998 was filed seeking recovery of sum of Rs. 42,23,437.50 along with interest.

3. Learned counsel for the appellant submitted that there was no intention on the part of the appellant not to defend the suit, in fact the proper instructions were given to the advocate for the said purpose. It was only on account of oversight that instead of filing vakalatnama in the said suit and filing written statement, an independent suit came to be filed. The appellant desired to lodge counterclaim in the suit filed by Mumbai Cricket Association.

4. On the other hand, learned counsel for the respondent – original plaintiff submitted that the suit remained undefended despite due service. Learned single Judge did not rely on uncontroverted averments of the plaintiff, instead, evidence in support of the claim was led. Satisfied with the evidence, the decree came to be passed.

5. Having thus heard the learned counsel for the parties and having perused the documents on record, in the interest

of justice, we are inclined to set aside the judgment and decree of the learned single Judge and remand the suit for fresh consideration and disposal on merits. It is true that the appellant – original defendant was not represented, no written statement was filed. However, the very fact that an independent suit was instituted would demonstrate that the defendant did not intend to abandon the cause. The justification that a counter claim was to be filed in the pending suit, therefore, deserves consideration. Dismissal of this appeal will also have a cascading effect of virtually rendering the suit of the present appellant infructuous since the suit filed by the Mumbai Cricket Association out of which the present appeal arise and the suit filed the appellant which is still pending arises out of the same dispute and in all probability, only one of the two suits can succeed.

6. The appellant, however, must pay heavy cost to earn a remand from this Court. Learned counsel for the appellant agreed to pay a cost of Rs. 10 lacs to the respondent. We have therefore based out conclusion on such basis. For the reasons stated above and on the assurance of the learned

counsel for the appellant to pay cost, the impugned judgment and decree is set aside. The appellant shall, by way of condition, pay cost of Rs. 10 lacs to the respondent within a period of two weeks from today.

7. As the suit is remanded for fresh consideration and disposal in accordance with law, the appellant shall have time of eight weeks to file the written statement. The appellant would also have an opportunity to cross-examine the witnesses of the plaintiff already examined. Both the sides will have opportunity to lead further evidence as may be desired.

8. That the judgment and decree are set aside, the decretal amount with interest deposited before this Court pending the appeal would be refunded to the appellant with further accrued interest if any. This refund shall be made after payment of cost of Rs. 10 lacs. Both the suits shall be consolidated. The remanded suit may have to be transferred to the City Civil Court, Mumbai. We are informed that the suit of the appellant is already transferred to the City Civil

court. The City Civil Court shall consolidate the suits and dispose of the same as expeditiously as possible.

9. In view of the above, the appeal is disposed of.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]